957.

SUPREME COURT OF THE UNITED STATES.

No. 115.

BALDWIN, VAIL & HUFTY, PLAINTIFFS IN ERROR,

vs.

JAMES PAYNE & AL.

IN ERROR TO THE HIGH COURT OF ERRORS AND APPEALS FOR THE STATE OF MISSISSIPPI.

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THE STATE OF MISSISSIPPI,
High court of errors and appeals, November term, 1844.

JAMES PAYNE, ABNER E. GREEN, and ROBERT Y. WOOD, plaintiffs in error,
vs.
MATHIAS W. BALDWIN, GEORGE VAIL, and GEORGE W. HUFTY, merchants and partners in trade, under the name, style and firm of "Baldwin, Vail & Hufty."

Pleas and proceedings before the honorable high court of errors and appeals of the State of Mississippi, at a regular term of said court, began and held at the court-room in the city of Jackson, on the first Monday in November, anno domini 1844; their honors, William L. Sharkey, chief justice, and Alexander M. Clayton and J. S. B. Thacher, being present.

Be it remembered, that heretofore, to wit, on the first day of May, A. D. 1843, James Payne, Abner E. Green, and Robert Y. Wood, sued out a writ of error to reverse a judgment of the circuit court of Jefferson county, rendered against them in favor of Baldwin, Vail and Hufty; which writ of error, with the transcript sent up in obedience thereto, are in the words and figures following, to wit:

Writ of error.

State of Mississippi, Jefferson county, to wit:

The State of Mississippi to the clerk of the circuit court of Jefferson county.

Whereas, James Payne, Abner E. Green, and Robert Y. Wood, defendants in a certain suit in said court of Jefferson county, between Baldwin, Vail and Hufty, plaintiffs, and James Payne, Abner E. Green, and Robert Y. Wood, defendants, hath applied, by petition to the clerk of the said court, for the issuance of a writ of error in said case, and hath given bond, with security, according to the statute in such cases.

You are, therefore, hereby commanded, that you send to the high court of errors and appeals of said State, distinctly and openly, under your hand and seal, the record and proceedings of the suit aforesaid, with all things concerning the same, and this writ, so that the said high court of errors and appeals may have them at the next term of the said high court of errors and appeals, to be holden at Jackson on the first Monday in July next.

Witness the honorable William L. Sharkey, presiding judge of the high court of errors and appeals of said State, at Jackson, on the first Monday in January, A. D. 1843, and in the 67th year of the sovereignty and independence of the United States of America.

[L. S.]

Issued the 21st day of May, A. D. 1843.

JAMES J. COLLIER, *Clerk*.
By J. B. WIGGINTON, *D. C.*

Transcript.

The State of Mississippi, Jefferson county:

Pleas held before the honorable Charles C. Cage, presiding judge of the third judicial district of the State of Mississippi, at a circuit court begun and held at the court-house in and for the county of Jefferson, on the first Monday in November, in the year of our Lord one thousand eight hundred and forty-two.

BALDWIN, VAIL and HUFTY, plaintiffs in assumpsit,
vs.
JAMES PAYNE, ABNER E. GREEN, ROBERT Y. WOOD, and the Mississippi Railroad Company, defendants.

Be it remembered, that heretofore, to wit, on the fifteenth day of April, in the year of our Lord one thousand eight hundred and forty-one, the plaintiffs, by their attorneys, filed in the clerk's office of the circuit court of said county their certain declaration against the said defendants; which is in the words and figures following, to wit:

Circuit court, of May term, 1844.

The State of Mississippi, Jefferson county:

James Payne, Abner E. Green, Robert Y. Wood, and the Mississippi Railroad Company, were summoned to answer Mathias W. Baldwin, George Vail, and George W. Hufty, persons doing business in co-partnership, under the name of Baldwin, Vail & Hufty, of a plea of trespass upon the case.

And thereupon the said plaintiffs complained, for that the said James Payne, Abner E. Green, and Robert Y. Wood, heretofore, to wit, on the day of , A. D. 1839, to wit, at the county aforesaid, made their certain promissory note in writing, the date whereof is the day and year aforesaid, and then and there delivered said promissory note to the said Mississippi Railroad Company, and thereby jointly and severally promised to pay, ninety days after the fourth day of December, A. D. 1839, to the order of the said Mississippi Railroad Company, at the Merchant's bank in the city of New Orleans, six thousand two hundred and eighty-three dollars and 95 cents, for value received. And the said Mississippi Railroad Company then and there duly endorsed and delivered said note, by E. F. Bragier, their cashier, to said plaintiffs. And the said plaintiffs aver that, afterwards, when said note became due and payable, to wit, on the sixth day of March, 1840, in the city of New Orleans, to wit, at the county aforesaid, said note was presented and shewn to, and at, said Merchant's bank in the city of New Orleans, and payment of the said sum of money therein specified was then and there required, according to the tenor and effect of said note; but that neither the said bank, nor the said drawers of said note, nor any person on their account, did, or would, at that or any other time, either before or since, pay the same, or any part thereof; of all which several promises the said Mississippi Railroad Company, on the day and year

last aforesaid, to wit, at the county aforesaid, had notice; by means whereof the said Payne, Green, and Wood, became liable to pay to the said plaintiffs said sum of money in said promissory note specified, according to the tenor and effect thereof; and the said Mississippi Railroad Company became liable to pay the same when they should be thereunto requested; and being so liable, the said Payne, Green, and Wood, in consideration thereof, afterwards, to wit, on the day and year first aforesaid, at the county aforesaid, undertook, and promised to the said plaintiffs, to pay them the said sum of money in said promissory note specified, according to its tenor and effect; and the said Mississippi Railroad Company, on the said sixth day of March, 1841, at the county aforesaid, undertook and promised the said plaintiffs to pay them the said sum of money, when thereto afterwards requested.

And, also, for that the said James Payne, Abner E. Green, and Robert Y. Wood, on the day of , in the year of our Lord one thousand eight hundred and thirty-nine, at, to wit, at the county aforesaid, made their certain other promissory note in writing, the date whereof is on the day and year aforesaid, and then and there delivered the said note to the said Mississippi Railroad Company, and thereby, jointly and severally, promised to pay, sixty days after the fourth day of December, 1839, to the order of the Mississippi Railroad Company, at the Merchant's bank in the city of New Orleans, six thousand two hundred and eighty-three dollars and 95 cents, for value received. And the said Mississippi Railroad Company then and there duly endorsed and delivered the said note to the said plaintiffs; and the said plaintiffs, in fact, say, that afterwards, when the said note became due and payable, to wit, on the fifth day of February, in the year of our Lord one thousand eight hundred and forty, at the city of New Orleans, to wit, at the county aforesaid, the said last mentioned note was presented to and at said bank, and the payment of the said sum of money therein specified was then and there duly required, according to the tenor and effect of said note; but that neither the said bank, nor the said drawers of said note, nor any other person, for or on their account, did, or would, at that or any other time, either before or since, pay the same, or any part thereof, to the said plaintiffs; of all which several promises the said Mississippi Railroad Company, afterwards, to wit, on the day and year last aforesaid, at the city of New Orleans, to wit, at the county aforesaid, had notice, by means whereof the said James Payne, Robert Y. Wood, and Abner E. Green, became liable to pay the said plaintiffs the said sum of money in the last aforesaid promissory note *last* mentioned, according to the tenor and effect thereof; and the said Mississippi Railroad Company became liable to pay the same when they should be thereunto afterwards requested; and being so liable, the said James Payne, Abner E. Green, and Robert Y. Wood, in consideration thereof, afterwards, to wit, on the day and year first aforesaid, at the county aforesaid, undertook and promised the said plaintiffs to pay them the said sum of money, according to the tenor and effect of said last mentioned note; and the said Mississippi Railroad Company, afterwards, to

wit, on the said fifth day of February, 1840, at said county, in consideration thereof, undertook and promised to pay the said plaintiffs the said sum of money, when they should be thereunto afterwards requested. Yet the said defendants, although often requested, have not, nor has either of them, paid the said plaintiffs the said sums of money, nor any part thereof; but to pay the same, or any part thereof, they, the said defendants, have hitherto wholly failed and refused, and still do fail and refuse, to the damage of the said plaintiffs of twenty thousand dollars, and therefore they bring suit.

QUITMAN & McMURRAN,
Plffs. atty's.

Thereupon the clerk of the circuit court issued a summons against the said defendants, which is in the words and figures following, to wit:

The State of Mississippi to the sheriff of Jefferson county, greeting:

You are hereby commanded, without delay, to summon James Payne, Abner E. Green, and Robert Y. Wood, and the Mississippi Railroad Company, wherever they be found in your county, to be and appear before the judges of the State aforesaid, at a circuit court to be holden at the court-house in and for the county of Jefferson, on the first Monday in May next, to answer to Mathias W. Baldwin, George Vail, and George W. Hufty, of a plea of trespass upon the case, to the plaintiffs' damage twenty thousand dollars, and have then there this writ.

Witness the ——— C. C. Cage, presiding judge of the said judicial district, of the State aforesaid, at the court-house in said county, on the first Monday in November, in the year of our Lord [L. S.] one thousand eight hundred and forty, and in the sixty-fifth year of the independence of the United States of America.

Issued the 15th day of April, A. D. 1841.

JAMES J. COLLIER, *Clerk.*

And upon said summons the clerk of said court made the following endorsement, to wit:

This action of assumpsit is founded on the two several promissory notes of the defendants, James Payne, Abner E. Green, and Robert Y. Wood, in favor of the Mississippi Railroad Company, and by the said company endorsed to the plaintiffs, said notes being each for the sum of six thousand two hundred and eighty-three $\frac{90}{100}$ dollars, and payable at the Merchant's Bank, in the city of New Orleans, and due sixty days after the 4th of December, 1839, and the other due ninety days after the 4th of December, 1839, and neither bearing any date on the face of them.

No bail is required, but judgment will be demanded at the return term of this court.

By order of QUITMAN & McMURRAN,
Plaintiffs' attorneys.

Test: JAS. J. COLLIER, *Clerk.*

Mem.—The sheriff will serve this writ on James Payne, Abner E.

Green, and R. Y. Wood, only; a duplicate writ having issued to Adams county against the Mississippi Railroad Company.

JAMES J. COLLIER, *Clerk.*

And upon said summons the sheriff made the following return, to wit:

Received April 17th, 1841. Geo. Torry, sheriff. Served on James Payne and Abner E. Green, April 21st, 1841. Geo. Torry, sheriff. Executed on Robert Y. Wood by a copy left at his house, April 27th, 1841. Geo. Torry, sheriff, by Jas. B. Truly, deputy sheriff.

And the said defendants, by John B. Coleman, their attorney, filed the following plea, to wit:

"And the said defendants, James Payne, Abner E. Green, and Robert Y. Wood, by attorney, come and defend the wrong and injury, when, &c., and say that they did not undertake or promise, in manner and form as the said plaintiffs have above thereof complained against them, and of this they put themselves upon the country.

COLEMAN, *Attorney for Defendants.*

And the plaintiffs do the like.

QUITMAN & McMURRAN,
For Plaintiffs.

And for a further plea in this behalf, the said defendants say *actio non*, because they say that the said promissory notes, in the declaration of said plaintiffs mentioned, were executed and delivered by them, the said defendants, to, and discounted by, the Mississippi Railroad Company, on the fourth day of December, in the year eighteen hundred and thirty-nine, at the county aforesaid, and thereby became and were the property of the said Mississippi Railroad Company, to wit, on the day and year aforesaid, at the county aforesaid; and that the said promissory notes continued to be and were the property of the Mississippi Railroad Company, from the day and year last aforesaid until and after the twenty-sixth day of April, in the year eighteen hundred and forty, at the county aforesaid; after which twenty-sixth day of April, in the year eighteen hundred and forty, to wit, on the first day of April, in the year eighteen hundred and forty-one, at the county aforesaid, the said Mississippi Railroad Company, by their endorsement thereon, transferred the said two promissory notes, in the said declaration mentioned, to the said plaintiffs; and this they are ready to verify; wherefore they pray judgment if the said plaintiffs ought to have or maintain their aforesaid action thereof against them.

COLEMAN, *Attorney for Defendants.*

And the said plaintiffs, as to the said plea of the said defendants, by them secondly above pleaded, say that the same and the matters therein contained, in manner and form as the same are above pleaded and set forth, are not sufficient in law to bar or preclude them, the said plaintiffs, from having or maintaining their aforesaid action thereof against the said defendants; and that they, the said defendants, are not bound,

by the laws of the land, to answer the same; and this the said plaintiffs are ready to verify. Wherefore, by reason of the insufficiency of *of* the said plea in this behalf, the said plaintiffs pray judgment and their damages, by reason of the not performing of the said several promises and undertakings in the said declaration mentioned, to be adjudged to them, &c. QUITMAN & McMURRAN,

Plaintiffs' Attorneys.

Joinder in demurrer in short, by consent.

CLARK & COLEMAN,

Defendants' Attorneys.

Afterwards, to wit, at the May term, in the year of our Lord one thousand eight hundred and forty-one, this cause was "continued."

Afterwards, to wit, at the May term of said court, in the year of our Lord one thousand eight hundred and forty-two, this cause was again "continued."

And afterwards, to wit, on the eleventh day of November, in the year of our Lord one thousand eight hundred and forty-two, the following order was entered upon the minutes of said court, to wit: Demurrer to second plea sustained, and judgment of respondeat ouster awarded; and the defendants, Payne, Green, and Wood, refused to plead further, and judgment thereon to said demurrer to said second plea for plaintiffs.

Also, afterwards, to wit, on the said eleventh day of November, in the year of our Lord one thousand eight hundred and forty-two, this cause came on and was called for trial. Dismissed as to the Mississippi Railroad Company. And on this day came a jury in this cause, "namely, Wiley S. McDonald, Joseph Morris, Jonathan E. Humphries, James B. Cook, Charles C. Warren, Edward Buckley, Ferdinand P. Montgomery, Philip B. Dougherty, Smith Hubbard, Asa P. Jones, Dans Short, Daniel Stephens," to try the issue joined between said parties, on the plea of the general issue; which jury, being first duly sworn, and after hearing the testimony of the respective parties, returned the following special verdict to the court: We, the jury, find that defendants, James Payne, Abner E. Green, and Robert Y. Wood, executed the two several promissory notes (described in the plaintiffs' declaration) on the fourth day of December, 1839, and on the same day delivered the said notes to the Mississippi Railroad Company, to be discounted for and on account of said James Payne, one of which said notes is for the sum of six thousand two hundred and eighty-three $\frac{95}{100}$ dollars, payable sixty days after said fourth day of December, eighteen hundred and thirty-nine, to the order of the said Mississippi Railroad Company, at the Merchant's Bank, in the city of New Orleans; and the other of said notes is for the sum of six thousand two hundred and eighty-three $\frac{95}{100}$ dollars, also payable ninety days after said fourth day of December, eighteen hundred and thirty-nine, to the order of the said Mississippi Railroad Company, at the Merchant's Bank, in the city of New Orleans.

That said two notes were discounted by said Mississippi Railroad Company, under their banking powers, on said fourth day of December, eighteen hundred and thirty-nine, at the instance of the first drawer, said James Payne, and the proceeds thereof were received by him, and said company thereby became the holder of said notes.

That said notes, or either of them, were not paid at maturity, and were presented for payment at maturity, and protested for non-payment, and that no part of them, nor any interest, has been paid by said defendants, or either of them.

That the Mississippi Railroad Company, on the first day of April, eighteen hundred and forty-one, being indebted to the plaintiffs, Baldwin, Vail and Hufty, transferred and delivered said two several promissory notes to said plaintiffs, for a valuable consideration, in payment of said debts.

If, upon the facts, the court is of opinion that the law is in favor of the plaintiffs, we find for the plaintiffs, and assess their damages at fifteen thousand three hundred and $\frac{90}{100}$ dollars. But if, upon these facts, the court is of opinion that the law is for the defendants, Payne, Green, and Wood, then we find in their favor.

And the court, having taken time to consider, and being of opinion that the laws on said special verdict is in favor of the plaintiffs, doth order and adjudge, that said plaintiffs do have and recover of said defendants, James Payne, Abner E. Green, and Robert Y. Wood, the sum of fifteen thousand three hundred dollars and ninety cents, assessed in manner aforesaid, in said special verdict; and also said plaintiffs' costs to be taxed, &c.

And afterwards, to wit, on the first day of May, in the year of our Lord one thousand eight hundred and forty-three, the defendants, by Charles Clark, their attorney, filed their petition for writ of error, which said petition is in the words and figures following, to wit:

To the clerk of the circuit court of Jefferson county: The petition of James Payne, Abner E. Green, and Robert Y. Wood, sheweth that, on the 11th day of November, 1842, Baldwin, Vail, and Hufty, recovered judgment in the said circuit court for the sum of fifteen thousand three hundred dollars and ninety cents, and costs of suit against the petitioners; and that your petitioners desire that the said judgment may be reversed by the high court of errors and appeals. Your petitioners pray that a writ of error may be granted in said case, returnable to the high court of errors and appeals, on the first Monday of July next, to operate as a supersedeas.

CHAS. CLARK, *Attorney for Petitioners.*

And on the said first day of May, in the year of our Lord one thousand eight hundred and forty-three, the said defendants filed their bond for a writ of error, which is in the words and figures following, to wit:

The State of Mississippi, Jefferson county, ss:

Know all men by these presents, that we, James Payne, Abner E. Green, and Robert Y. Wood, James Wood, and Thomas Adams, are

held and firmly bound unto Baldwin, Vail and Hufty, in the just and full sum of thirty-one thousand dollars, to be paid to the said Baldwin, Vail and Hufty, or their assigns; to which payment, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated this 17th day of April, A. D. 1843.

Whereas the said Baldwin, Vail and Hufty, on the 11th day of November, 1842, recovered judgment in the circuit court of Jefferson county, Mississippi, against the said James Payne, Abner E. Green, and Robert Y. Wood, for the sum of fifteen thousand three hundred dollars and ninety cents, and cost of suit; and the said James Payne, Abner E. Green, and Robert Y. Wood, have applied by petition to the clerk of the circuit court of said county, for a writ of error to operate as a supersedeas in said case, which been granted, returnable to the high court of errors and appeals of said State, to be holden at Jackson on the first Monday of July next, to operate as a supersedeas upon the execution of this bond.

Now the condition of this obligation is such, that if the said James Payne, Abner E. Green, and Robert Y. Wood, shall prosecute their said writ of error with effect, and shall pay and satisfy the said judgment, and all interest, damages, and cost, in case the said judgment shall be affirmed; and shall abide by and perform the sentence, judgment, or decree, which the high court of errors and appeals shall render herein; then and in that case this obligation shall be void, else shall be and remain in full force and effect.

JAMES PAYNE, [SEAL.]
[SEAL.]
ROBERT Y. WOOD, [SEAL.]
THOS. ADAMS. [SEAL.]

The within bond, and the securities thereto, are approved by me, this 1st May, 1843.

JAMES J. COLLIER, *Clerk.*
By J. B. WIGGINTON, *D. C.*

State of Mississippi, Jefferson county, ss:

I, James J. Collier, clerk of the circuit court in and for said county, and State aforesaid, do hereby certify, that the foregoing fifteen pages (including this) contains a true and perfect transcript of the record and proceedings had in said case of Baldwin, Vail and Hufty, against James Payne, Abner E. Green, and Robert Y. Wood, and the Mississippi Railroad Company, as remains on file and of record in my office.

In testimony whereof, I have hereunto set my hand and seal of office, at Fayette, this 8th day of June, A. D. 1843.

JAMES J. COLLIER, *Clerk.*
By J. B. WIGGINTON, *D. C.*

And afterwards, to wit, at the July term of our said high court, 1843, this cause was continued by operation of law.

And afterwards, to wit, at the January term, 1844, of said court, to

wit, on the ninth day of February, 1844, this cause was "argued and submitted."

And afterwards, to wit, at the November term, 1844, of our said high court of errors and appeals, to wit, on the eleventh day of November, A. D. 1844, the final judgment of said high court was rendered in this case, which final judgment is in the words and figures following, to wit:

JAMES PAYNE, Abner E. Green, and Robert Y. Wood, plaintiffs in error,
vs.
MATHIAS W. BALDWIN, George Vail, and George W. Hufty, merchants and partners in trade, under the name, style, and firm of "Baldwin, Vail and Hufty."

This cause having been submitted at a former term of this court, and the same having been duly considered by the court, it is ordered and adjudged, that the judgment of the circuit court of Jefferson county, rendered against the plaintiffs in error on the 11th day of November, 1842, be, and the same is hereby, reversed, and for nothing held.

It is further considered, that this court do now proceed to render the judgment that should have been rendered by the court below; and it is ordered and adjudged that the said defendants in error, plaintiffs in the court below, take nothing by their writ; that the suit is abated, and that the plaintiffs in error do have and recover from the defendants in error their costs about this suit expended, to be taxed, &c.

The State of Mississippi, High Court of Errors and Appeals:

I, John M. Duffield, clerk of said court, do hereby certify the foregoing eleven pages to be a correct copy of the record in said case of Payne, Green and Wood vs. Baldwin, Vail and Hufty, filed in my office, from the circuit court of Jefferson county; together with a correct copy of the proceedings and judgment of said high court in said case, as the same is on file and of record in my office.

Given under my hand and the seal of said court this 19th day of December, A. D. 1844.

[SEAL.]

J. M. DUFFIELD, *Cl'k, H. C. E. & A.*

THE STATE OF MISSISSIPPI:

High Court of Errors and Appeals,
November term, A. D. 1844.

PAYNE, GREEN & WOOD,
vs.
BALDWIN, VAIL & HUFTY.

Mr. Chief Justice Sharkey delivered the opinion of the court.

Baldwin, Vail & Hufty instituted this suit against the plaintiffs in error on two promissory notes, each for the sum of $6,283 95, payable at the Merchants' Bank in New Orleans, one at sixty and the other at ninety days from the 14th of December, 1839.

The jury returned a special verdict, by which it appears that the two notes were made on the 4th of December, 1839, by James Payne, Abner E. Green, and Robert Y. Wood, and on the same day delivered to the Mississippi Railroad Company for and on account of Payne; and that the notes were discounted by the company, under the banking powers, on the same day, at the instance of Payne, who received the proceeds, and the company became thereby the holders of the notes, which were presented for payment at maturity, and on payment being refused, were protested and remain unpaid. The Mississippi Railroad Company, being indebted to Baldwin, Vail & Hufty, on the first day of April, 1841, transferred to them the notes in payment of the debt. If, upon these facts, the law was for the plaintiffs, then they found for them; but if the law was for the defendants, then they found for them. The court gave judgment for the plaintiffs, and the defendants brought up the cause by writ of error, and the sole question is, had the bank, at the time mentioned, a right to transfer its negotiable securities in the face of an act of the legislature previously passed prohibiting such transfer.

The language of the prohibition is as follows: "That it shall not be lawful for any bank in this State to transfer, by endorsement or otherwise, any note, bill receivable, or other evidence of debt; and if it shall appear in evidence upon the trial of any action upon any such note, bill receivable, or other evidence of debt, that the same was so transferred, the same shall abate upon the plea of the defendant. This, it is insisted, is in violation of that provision in the Constitution of the United States, which declares that no State shall pass any law impairing the obligation of contracts, and therefore void, inasmuch as it impairs a right conferred upon the bank by its charter to transfer promissory notes.

We are referred to the adjudged cases on this subject, beginning with the great case of Dartmouth College vs. Woodward, which has been followed by others of high authority, all holding that a charter to a private corporation is a contract within the meaning of the Constitution, and that any act of a State legislature which abridges, alters, or materially changes any corporate rights secured by the charter, without the consent of the corporation, is void, as being repugnant to the Constitution. By some of these authorities, a bank is held to be a corporation of this description. If the correctness of this doctrine rested alone on positive authority, it would be rashness at this day to question it, but it commands the entire approbation of judicial reason, and deserves to be venerated for its purity. Legislation which impairs chartered rights is not only at war with the Constitution of the United States, but it is repugnant to a similar provision in our State constitution, and on that account would be inoperative. But if both these instruments were silent as to the power to impair the obligations of contracts, such legislation is essentially repugnant to the protective spirit of a well organized government. In a government like ours, such power is totally out of the range of legislative authority. We are governed by a written constitution, which is a limit to the exercise of power, and by which certain

great principles are expressly excepted out of the general powers of legislation. No one can be deprived of his life, liberty, or property but by due course of law, and the spirit of this provision extends undoubtedly to franchises granted to a body corporate. Government is designed for the happiness and safety of the people, for their security in the enjoyment of whatever right they may have acquired, and it is immaterial whether the right has been acquired by grant from the State or from an individual. The State must observe good faith as well as individuals, and she can no more withdraw what she has granted than can an individual, unless she has reserved the power to do so. She may grant upon condition, express or implied, and the right may be forfeited, but it cannot be withdrawn at pleasure. The Parliament of Great Britain claims to be omnipotent, and may possess the right to annul corporate rights, but it does not exercise it. Our constitutional provisions were designed as checks against the exercise of any power which is destructive of private vested rights.

A bank charter is as good an example of a contract within the meaning of the Constitution, as any that could be given. The State either voluntarily tenders, or grants on the application of individuals, it is immaterial which, individuality and immortality to an artificial or legal person, and confers upon it certain powers, on the condition of acceptance and investment for the purposes of carrying out the objects of the charter. When it is accepted and acted under, the privileges secured or granted are irrevocable, as much so as if the grant had been made to a private individual, and it is immaterial whether the benefit of the State or the public is actual or ideal; it may even prove injurious, but this will not alter the irrevocability of the contract. The State must keep its proffered faith.

This being the law then, there is but one point left to determine; and that is, has there been an infraction of chartered rights? Has the obligation of the contract with the Mississippi Railroad Company been impaired? If so, the act is void. But if, on the contrary, the rights granted have not been impaired, the act is valid. We cannot declare an act void unless there has been a palpable infraction of a constitutional provision. It will not do that by possible construction it may conflict with the Constitution, because a construction which produces confliction is to be avoided if any other can be fairly given.

It is said the powers of this bank are co-extensive with any bank in the State, under a general provision in the supplement which authorized the company to "exercise all the usual rights, powers, and privileges of banking, which are permitted to banking institutions in this State." As it possesses all the powers of any other bank, the charter of the Planters' Bank is resorted to as but shewing what those powers are; by the 6th section of which it is declared that the bank shall be "able and capable in law to have, possess, receive, retain, and enjoy to themselves and their successors, lands, rents, tenements, hereditaments, goods, chattels, and effects of what kind soever, nature and quality, not exceeding, in the whole, six millions of dollars, including the capital

stock; and the same to grant, demise, alien, or dispose of for the good of said bank." It is under this section that express power is claimed to transfer notes. The 17th section confers power to receive money on deposite, to discount bills of exchange and notes, to make loans, &c., but is silent as to the power to transfer notes; and we are to determine whether counsel are right in supposing that the power was conferred by the 6th section.

The first thing which strikes us as rather remarkable is, that the power to transfer notes is claimed under a section which does not even authorize the bank to take notes, unless it be by a very remote implication. The 6th section never was designed to perform such an office. This becomes manifest when we follow up the charter, and find, in a subsequent section, an express provision authorizing them to discount notes and bills. But, say the counsel, notes are "*effects*," and the power to dispose of effects is equivalent to a power to assign notes. The word "effects" is very comprehensive in its signification, it is true; but when we come to construe the words of a law, we must look at the context to arrive at their true meaning. When we come to do this, it seems more than probable that the legislature, in using the word "effects," had no idea that they were regulating the transfer and ownership of promissory notes. To discount notes and bills is the principal business of a bank, and being so, the legislature was specific in granting authority to do so. Would it not seem like very awkward legislation, in creating a bank, to leave with only a general power to take "effects," and to dispose of them for the good of the bank? It would, and hence we fairly conclude, that in this instance the 6th section had reference only to the property of the bank, and not to its choses in action, or more properly its notes.

But there are other considerations which are entitled to more weight. We are informed that a corporation possesses only those powers or properties which the charter of its creation confers upon it, either expressly or as incidental to its very existence. Dartmouth College vs. Woodward. The incidental or implied powers must not be construed to embrace every thing. They are at most only such powers as are essentially necessary to enable the corporation to fulfil its destiny—to do those things which it may do by express permission. Such powers it may be presumed were intended to be conferred; they are implied from those which are granted. In order to ascertain what has been granted, we must look to the grant solely, and it will be well to keep out of view the general provisions of the law, and consider of the grant as though no such provisions existed. The right to transfer notes is claimed under the charter. In England, notes received their negotiable character from the 4th and 5th of Ann; before that time they were not assignable, it being a general principle in the common law that choses in action were not assignable. With us they derive the character of negotiability from a statute which declares that all bonds, notes, &c., may be assigned by indorsement, and the indorsee may maintain an action in his own name and recover, subject, however, to offsets acquired before notice of

transfer. H. & H., Dig. 373. Now, let us sweep this statute from the statute-book, and suppose no such law had ever existed, could any one imagine, in such a case, that this bank charter made notes negotiable by indorsement, and enabled the holder to sue in his own name and recover? Does it perform the office of the statute of Ann, and of our own statute, and enable the bank, in the legal and mercantile sense of the term, to assign its notes by indorsement? To these questions there can be but one answer, and that in the negative. If notes are negotiable under this charter, they may be negotiated so as to deprive the maker of his offsets, for it contains no provision for him. This right is secured to him alone by the general law providing for the negotiation of paper. Yet, I suppose, that no one would contend that offsets acquired against the bank, before notice of assignment, would not be available against the note in the hands of any holder. Then, I apprehend, that counsel are mistaken in supposing that the charter gives express authority to assign notes. If the bank has such power, it must, in some shape or other, derive it from the general law regulating this subject; for we cannot say that the right to *dispose of effects* confers any right to endorse a note so as to enable the endorsee to maintain an action in his own name. The right to dispose of effects is a right which was always enjoyed by every individual, and yet statutes, specially framed for the purpose, have been thought necessary, both in England and America, to enable the payee of a note to transfer it.

But it is also insisted that, independently of the grant to this corporation, it is incident to it, a common law, to have a capacity to purchase and alien lands and chattels. That is true, if by law the property may be sold or disposed of. The *jus disponendi* is an *incident to property*; it is not an incident to the corporate rights in that broad and unqualified sense contended for. The authority given to this bank to dispose of the property which it was authorized to acquire, was mere supererogation, it had that power without the grant, to the same extent that it has with it, for the charter gives nothing but a general authority. But the power to hold and dispose of property only enables the corporation to take it with all its incidents, and so dispose of it. The *jus disponendi* is regulated by the general laws of the State, as well in reference to corporations as to individuals, unless, by an express grant, their property is exempted from the operation of those laws, or unless, by providing another ample mode, the legislature should so plainly indicate an intention to make an exemption, as to leave the matter beyond doubt. This charter grants no independent or distinct power to dispose of property. It gives the power to hold property and dispose of it, but it is silent as to the mode of disposition; the consequence is, that it must be disposed of according to the general law. All that was meant by the grant of power to dispose of property was to give that power, if by law *if by law* the property was in its character alienable and vendible; and this, too, is the extent of the common law power. In this respect, the corporation stands precisely on a footing with natural persons. They cannot sell that which it is illegal to sell, or which is not transferable from one to

another. And in selling that which may by law be disposed of, the general law must be followed. The right to dispose of it must depend upon the law of the property. As these laws are alterable at the pleasure of the legislature, the corporation cannot claim exemption from the effect of these alterations, unless by express stipulation the legislature has consented to grant such exemption. These changes cannot effect vested rights, of course, but they are binding on the corporation in all subsequent transactions. Suppose this corporation were selling its real estate, would it not follow the law of conveyances, as it existed at the time of making the conveyance? Surely it would, because the charter gives it now power to convey in any other way. Could it convey in fee tail? It could not, because it has no grant of exemption from the general law. Private property may be appropriated to public uses, on just compensation made. Could it be said that the corporation, because its charter authorized it to hold property, was exempt from this provision? The bank then holds its property subject to such exactions, restrictions, or incidents, as are imposed by law on the property of individuals, unless they are removed by the charter. This corporation has power to take promissory notes. Negotiability is an incident or quality attached to notes by law, not by the charter. It does not constitute an essential ingredient in a note. It does not strengthen the contract between the maker and payer, nor does it constitute any part of that contract; and as it was a privileged enjoyed by the corporation solely under the general law, it is one which was taken from them by the repeal of the law. The charter gives them no guaranty that the law should not be repealed. It was a subject over which the legislature had entire control when the charter was granted; and this, like all other subjects, is still subject to that control, unless a clear and positive restriction has been imposed. The power of the legislature is not to be taken away by construction. If the charter had granted power to assign these notes, so as to enable the assignee to maintain an action in his own name, then the right would have been beyond the control of the legislature. Or, if this were a power essentially important to enable the bank to carry on its business, and necessarily by the charter, then the question would be different; but it is not. It may be very convenient for a bank to transfer its securities, but certainly such power is not essential to its existence, or to its capacity to do banking business. A contract is not impaired in its obligation, unless some right or privilege which has been granted has been defeated or abridged. The legislature did nothing but take from promissory notes an incident which they had previously given them. The substance of the note itself was not changed, and the charter does not guaranty to the corporation that such notes should remain negotiable. As well might it be insisted that the whole code of laws, with regard to property, was unchangeable as to the property of this corporation. That taxes should not be increased, or imposed on any article that was not then taxable.

These views accord with the decision of the Supreme Court of the United States in the case of the Providence Bank vs. Billings and Pet-

man; 4 Peters, 514. The bank insisted that it was exempt from the operation of a law, subsequently passed, imposing a tax on bank stock. It was held that the taxing power was held important to the Government, and that nothing but an express exemption would exonerate property of the bank from the general power of the legislature to impose taxes on it. This may be said with truth of all the legitimate subjects of legislation; they are important to the Government; some, it is true, more so than others; and we cannot assume that any branch of it has been abandoned, without an express declaration to that effect. "The power of legislation, (said the Supreme Court,) and consequently of taxation, operates on all persons and property belonging to the body politic. This is an original princi*pal*, which has its foundation in society itself. It is granted by all for the benefit of all. It resides in Government as a part of itself, and need not be reserved when property of any description, or the right to use it in any manner, is granted to individuals or corporate bodies." Another portion of the opinion in the case referred to, which was delivered by Chief Justice Marshall, will apply in the present case with still greater force. "The great object of an incorporation is, to bestow the character and properties of individuality on a collective and changing body of men. This capacity is always given to such a body. Any privileges which may exempt it from the burthens common to individuals, do not flow necessarily from the charter, but must be expressed in it, or they do not exist." For this corporation is claimed a privilege, the privilege of exemption from legislative action, on one of the legitimate subjects of legislation. Such a privilege is not expressed in the charter, and therefore does not exist. They claim that the law regulating the negotiability of promissory notes shall remain as it stood when the charter was given. The alteration in the law does not deprive the corporation of any granted franchise; it does not take away from it any of its property or effects; it does not impair the obligation of any contract that had been made. The assignment of a note is a new contract, the power to made which was derived from the law, and the new law simply takes this power from the corporation. It amounts at most to a mere modification of the use that may be made of a promissory note, leaving the corporation the full power to use their notes according to their legal effect. The obligation of the contract in this instance is the duty the State is under to secure to the corporation the full enjoyment of all that was granted; but it is no part of the obligation that the State should withdraw its *its* power of legislating on proper subjects for legislative action, because by such legislation a particular kind of property, which the corporation may hold, may be rendered less useful to it. For these reasons we think the law on the special verdict was for the defendants, and there is nothing in the pleadings which can change the judgment.

Judgment reversed, and judgment for defendants.

I, John M. Duffield, clerk of the high court of error and appeals of the State of Mississippi, do hereby certify, that the foregoing eight pages, (this inclusive,) contains a true and perfect transcript of the opin-

ion of said court in the case therein stated, as taken from the papers now on file in my office.

Given under my hand and seal of said court, this the 14th day of November, A. D. 1844.

J. M. DUFFIELD, *Clerk.*

The State of Mississippi, high court of errors and appeals:

I, John M. Duffield, clerk of the high court aforesaid, do hereby certify the foregoing transcripts to be true copies of the record in the case of Payne, Green & Wood, vs. Baldwin, Vail & Hufty, and also of the opinion of the court in said case, together with a correct copy of the proceedings and judgment of said court.

Given under my hand and the seal of said court, this fourth
[L. S.] day of August, A. D. 1845.

JOHN M. DUFFIELD, *Clerk.*
By L. JULIENNE, *D. Clerk.*

United States, district of Mississippi:

The President of the United States to the judges of the high
[SEAL.] court of errors and appeals of the State of Mississippi, greeting:

Because that, in the record and process, and also in the rendering of judgment in a suit before you, between James Payne, Abner E. Green and Robert Y. Wood, plaintiffs in error, and Mathias W. Baldwin, George Vail and George W. Hufty, merchants and persons in trade under the name, style, and firm of Baldwin, Vail & Hufty, defendants in error, in a plea of trespass on the case, &c., a manifest error has intervened to the great damage of the said defendants, as in their complaint has been stated. And as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf, you are hereby commanded, that if judgment thereof be given, then, under your seal, you do distinctly and openly send the record and process in the suit aforesaid, with all things concerning them, and this writ, so that you have the same before the chief justice and associate justices of the Supreme Court of the United States, at the city of Washington, being the seat of National Government, on the first Monday of December next, that the record and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at . . . . this 12th day of July, A. D. one thousand eight hundred and forty-five, and in the sixty-ninth year of the independence of the said United States.

WM. THOS. CARROLL,
Clerk of the Supreme Court of the United States.

Allowed by me. P. V. DANIEL,
Associate Justice of the Supreme Court U. S.

July 12th, 1845.

United States, district of Mississippi:

To James Payne, Abner E. Green and Robert Y. Wood.

Whereas, by a writ of error, issuing out of the Supreme Court of the United States, directed to the judges of the high court of errors and appeals of the State of Mississippi, wherein Mathias W. Baldwin, George Vail and George W. Hufty, merchants and partners in trade, under the name, style, and firm of Baldwin, Vail & Hufty, are plaintiffs in error, and James Payne, Abner E. Green and Robert Y. Wood, are defendants in error, the said judges are directed to send the record and process of a certain suit, with all things concerning them, so that the same may be had before the chief justice and associate justices of the Supreme Court of the United States, on the first Monday of December next, at the city of Washington, being the seat of National Government, in which suit James Payne, Abner E. Green and Robert Y. Wood, were original plaintiffs in error, and Mathias W. Baldwin, George Vail and George W. Hufty, merchants and partners in trade, under the name, style, and firm of Baldwin, Vail & Hufty, were original defendants in error, in a plea of trespass upon the case, &c.; that the record and process aforesaid being inspected, they, the said chief justice and associate justices, may cause to be done thereupon what of right ought to be done; and the said plaintiffs in error having made an assignment of errors, and given good and sufficient security that the plaintiffs in error shall well and truly prosecute their said writ of error to effect, and answer all such costs as, upon an affirmance of the judgment of the said high court of errors and appeals, may be adjudged to the defendant in error. You are hereby cited to appear (if you see cause) at the said Supreme Court, at the time and place aforesaid, to answer to the said writ of error, and the errors assigned by the said plaintiffs in error.

Given under my hand and seal, this 12th day of July, one thousand eight hundred and forty-five.

P. V. DANIEL, *Associate Justice of the Supreme Court of the United States.*

Executed the within citation by leaving a copy with each of the defendants, to wit, Abner E. Green on the 7th day of August, 1845, Robert Y. Wood on the 7th day of August, 1845, and James Payne on the 8th day of August, 1845.

THOMAS FLETCHER,
Marshal of southern district of Mississippi.
By PATTERSON FLETCHER, *Deputy.*

UNITED STATES, *Eastern district of Pennsylvania, sct:*

Be it remembered that, on the 29th day of April, in the year of our Lord one thousand eight hundred and forty-five, before the honorable Archibald Randall, judge of the district court of the United States, in and for the eastern district of Pennsylvania, and as such presiding judge of the circuit court of the United States, in and for the eastern district of Pennsylvania, in the third circuit, came Stephen Vail, of the State

of New Jersey, Matthias W. Baldwin and John Bacon, of the city of Philadelphia, and acknowledged themselves, jointly and severally, to owe unto James Payne, Abner E. Green, and Robert Y. Wood, five hundred dollars, lawful money of the United States, to be levied of their goods and chattels, lands and tenements, joint and several, to the use of the said James Payne, Abner E. Green, and Robert Y. Wood.

Upon condition, that whereas Mathias W. Baldwin, George Vail, and George W. Hufty, merchants and partners in trade, under the name, style, and firm of Baldwin, Vail & Hufty, have this day sued out a writ of error from the Supreme Court of the United States to the judges of the high court of errors and appeals of the State of Mississippi directed, commanding them to send the record and process of a certain suit between James Payne, Abner E. Green, and Robert Y. Wood, plaintiffs in error, and Mathias W. Baldwin, George Vail, and George W. Hufty, merchants and partners in trade, under the name, style, and firm of Baldwin, Vail & Hufty, so that the same should be before the chief justice and associate justices of the Supreme Court of the United States at the city of Washington, being the seat of national government, on the first Monday of December next; that the record and process aforesaid being inspected, the said Supreme Court may cause to be done thereupon what of right ought to be done.

Now, if the said Mathias W. Baldwin, George Vail, and George W. Hufty, merchants and partners in trade, under the name, style, and firm of Baldwin, Vail & Hufty, shall answer all such costs as, upon an affirmance of the said judgment, may be adjudged to the defendants in error, then this recognizance to be void; otherwise, to be and remain in full force.

STEPHEN VAIL,
M. W. BALDWIN,
JOHN BACON.

Taken and acknowledged before me, April 29, 1845.
ARCH. RANDALL,
Judge E. D. Penn'a.

I believe the foregoing to be ample security.
FRA. HOPKINSON,
April 29th, 1845. *Clerk Dist. Ct. U. S.*

I believe the foregoing to be ample security.
ARCH. RANDALL,
June 19, 1845. *Judge E. D. Penn'a.*

Approved by me. P. V. DANIEL,
Associate justice of the Supreme Court of the U. S.
July 12th, 1835.

PAYNE, GREEN & WOOD,
vs.
BALDWIN, VAIL & HUFTY.

Assignment of errors by Baldwin, Vail & Hufty, plaintiffs in error.

1. That the high court of errors and appeals of the State of Mississippi erred, in this: that they gave judgment for the defendants in error, (Payne, Green & Wood,) the act of assembly, upon which the same was rendered, being contrary to the Constitution of the United States, and therefore unconstitutional and void; that the said act of assembly, being a public general law, known to the court, and not requiring to be pleaded or proved, was applicable to the case, and the Constitution of the United States was also applicable to the case, and the decision was against the right under the Constitution.

JOHN SERGEANT,
G. M. WHARTON,
For plaintiffs in error.

Filed 29th August, 1845.